THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 29354 OF 1997

Date: 26.03.2007

Between:

M/s. Haritha Agencies (P) Ltd., Industrial Estate Eluru, West Godavari District.

... Petitioner

and

The Deputy Commissioner of Labour (Authority under the Minimum Wages Act) Eluru, West Godavari District and another.

... Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 29354 OF 1997

ORDER:

Aggrieved by the order of the first respondent, the competent authority under the Minimum Wages Act in M.W. Case No. 1 of 1996 dated 11.04.1997, the present writ petition is filed.

The Assistant Labour Officer, Eluru inspected the premises of the petitioner herein on 15.07.1995 and found that 28 workers had not paid the minimum wages in accordance with G.O.Ms. No. 185 dated 26.12.1992. Consequent on a claim application being filed by the Assistant Labour Officer and the counter being filed thereto by the petitioner herein the Assistant Labour Officer was examined as A.W-1. On behalf of the petitioner herein the Manager and worker were examined as R.Ws-1 and 2. On considering the evidence on record the first respondent held that the claim related for a period of one year and there was no concrete defence for the petitioner against the claim. The competent authority held that the petitioner was liable to pay the differential wages of Rs.18,292.50ps to the 28 workers along with five times compensation of Rs.91,462.50 ps. Thus in total Rs.1,09,755.00 ps was required to be paid. Aggrieved thereby the petitioner approached this Court. This Court by an interim order directed the petitioner to deposit a sum of Rs.36,000/- before the competent authority.

Sri A. Prabhakar Rao, learned Counsel for the petitioner would submit that even in the absence of a statement filed by any of the workman, the second respondent had on his own accord

arrived at such a conclusion and had paid wages less than the minimum wages though in fact the amount paid to the workman was higher than the minimum wages fixed. Learned Counsel would contend that while imposing the penalty of five times the first respondent had failed to assign any reasons. It is necessary to note that this Court would not sit in appeal over findings of the competent authority as long as the said findings are based on evidence on record. The evidence of the Assistant Labour Officer is based on verification of the salaries register extracts of which have been filed before the competent authority a perusal thereof would show that there has been a short fall in payment of the minimum wages amount payable and, as such the second respondent was justified in arriving at a conclusion that the petitioner had paid less than the minimum wages to an extent of Rs.18,292.50 ps. It is necessary to note that under Section 25 of the Minimum Wages Act, no workman can enter into a contract relinquishing or reducing his right to the Minimum Rate of Wages. As such absence of any statement by the workman concerned would be of no assistance to the petitioner as even if a workman is willing to work for less than the minimum wages, Section 25 of the Minimum Wages Act prohibits an employer paying him less than the minimum wages prescribed in exercise of the powers conferred under the Act.

The next question which arises for consideration is with regards the penalty which can be fixed for payment of wages less than the Minimum Wages payable. Under Section 20(3)(1) of the Minimum Wages Act, the competent authority is empowered to

direct payment of compensation not exceeding ten times. The authority concerned has directed payment of upto five times of the amount. While the competent authority no doubt has the power to direct payment of compensation of upto five times, he was required to assign reasons in justification of his conclusion as to why he has chosen to direct payment of compensation of five times of the amount. The impugned order is bereft of reasons. While affirming the order of the competent authority in directing the petitioner herein to pay wages of Rs.18,292.50 ps, the order in so far as the petitioner herein was directed to pay compensation of five times the order is set aside and the matter remanded to the first respondent to pass a reasoned order regarding the compensation payable for non-payment of the Minimum Wages and thereafter take action against the petitioner in accordance with law. The amount of Rs.18,292.50 ps shall be disbursed forthwith to the workman concerned from out of Rs.36,000/- lying in deposit with the first respondent. The remaining amount shall lie in deposit and would depend upon the final orders, the first respondent may pass with regards the compensation payable for short payment of Minimum Wages payable under the Act. The writ petition is disposed of. No order as to costs.

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Date: 26.03.2007 RAMESH RANGANATHAN, J

MRKR